Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Computer III Further Remand	)	CC Docket No. 95-20
Proceedings: Bell Operating Company	)	
Provision of Enhanced Services	)	
	)	
1998 Biennial Regulatory Review --	)	CC Docket No. 98-10
Review of Computer III and ONA	)	
Safeguards and Requirements	)	

REPLY COMMMENTS OF U S WEST, INC.

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SUMMARY

U S WEST, Inc. ("U S WEST") hereby submits its reply comments in response to the Federal Communications Commission's ("Commission") Further Notice of Proposed Rulemaking in this proceeding.

Section 11 of the Telecommunications Act of 1996 ("1996 Act") establishes a statutory presumption that regulation is not necessary, and a statutory command that unnecessary regulations be eliminated. This deregulatory presumption is further buttressed by Sections 10 and 706 of the 1996 Act. There was widespread support among the commenters for the Commission's deregulatory proposals to eliminate unnecessary Open Network Architecture ("ONA") requirements and Computer III non-structural safeguards as part of the biennial review of regulations mandated by Congress in Section 11.

Some commenters, however, argued strenuously in favor of maintaining regulations -- or, even worse, reviving regulations -- which serve their individual interests. For example, a number of parties seek to resurrect structural separation. These commenters failed to present evidence demonstrating that such an extreme measure is needed to protect information services providers ("ISP") from discrimination, or even that such discrimination is likely to occur. Indeed, there is irrefutable evidence in this proceeding that new information services and competition in the information services market have flourished under the Commission's structural integration policy. U S WEST and other commenters also submitted compelling evidence that reviving structural separation would have a

severe negative impact on the provision of new services and the availability of such services to the public.

While the majority of commenters agreed that Section 251 unbundling rights should not be extended to "pure" ISPs, a number of ISPs argued that they should be afforded Section 251 unbundling rights without assuming the obligations of telecommunications carriers. Contrary to the claims of these ISPs, however, the Commission lacks the authority, on its own, to expand the specific unbundling obligations established by Congress in the 1996 Act. Further, these ISPs have failed to demonstrate that existing options are insufficient to meet their needs. In addition to the 120-day process, ISPs also have the option of operating as competitive local exchange carriers ("CLEC") or partnering with an existing CLEC. The explosive growth of the ISP industry is further evidence that there is no need for the Commission to impose additional unbundling obligations in this proceeding.

The Commission's existing regulatory regime provides competitors with sufficient access to DSL services, which can vastly increase the capacity of a copper loop, thereby bringing tremendous benefits to customers and telecommunications providers alike. U S WEST is actively (and successfully) marketing DSL services to third-party ISPs. Moreover, any CLEC can obtain unbundled loops from U S WEST and provide its own DSL service. There are a number of incumbent local exchange carriers ("ILEC"), CLECs and ISPs that have already deployed their own DSL services.

There was widespread support for streamlining the Commission's existing ONA requirements and Computer III non-structural safeguards. First, a number of

parties expressed support for the Commission's proposal to eliminate the requirement that BOCs file comparably efficient interconnection ("CEI") plans and obtain Common Carrier Bureau approval for these plans prior to providing new information services. There is substantial evidence in the record demonstrating that the CEI plan requirement delays the introduction of new information services and stifles innovation.

Second, the Commission should aggressively streamline its existing CEI parameters and Computer III non-structural safeguards to eliminate redundancies. For example, as the Commission proposed, the network disclosure rules adopted pursuant to Section 251(c)(5) of the 1996 Act should supersede the Commission's previous network information disclosure rules.

Third, the Commission should simplify the ONA reporting requirements by consolidating the quarterly installation and maintenance parity reports into an annual affidavit. The semi-annual reports and the Annual Report should be consolidated into a new Annual ONA Report. Rather than requiring each BOC to file an Annual ONA Report, the information can be provided by the Network Interconnectivity Interoperability Forum ("NIIF") or posted on a Web site.

Finally, the Commission should adopt regulatory classifications that reflect technological developments and do not distort market behavior. As part of its harmonizing of the definition of enhanced services and information services, the Commission should specify that the simple task of a protocol conversion supporting more than one interface by a carrier is not an enhanced service.

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REPLY COMMMENTS OF U S WEST, INC.

U S WEST, Inc. ("U S WEST") hereby submits its reply comments in response to the Federal Communications Commission's ("Commission") Further Notice of Proposed Rulemaking in the above-referenced proceeding.[1]

Many parties agreed with the Commission's tentative conclusion to continue with its existing non-structural safeguard regime, rather than re-imposing structural separation.[2] There also was widespread support among the commenters for the Commission's proposals to eliminate unnecessary Open Network Architecture ("ONA") requirements and Computer III safeguards (collectively, the "Computer Rules") as part of the biennial review of regulations mandated by

[1] In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements, CC Docket Nos. 95-20 and 98-10, Further Notice of Proposed Rulemaking, FCC 98-8, rel. Jan. 30, 1998 ("Computer III Further Notice").

Congress in Section 11 of the Telecommunications Act of 1996 ("1996 Act").[3] For example, many parties supported the Commission's proposal to eliminate the comparably efficient interconnection ("CEI") plan filing requirement.[4] Consistent with the Commission's own deregulatory proposals in the Computer III Further Notice, various commenters identified additional ways in which the Computer III rules should be streamlined so that they are neither duplicative nor overly burdensome. U S WEST fully supports these deregulatory proposals.

At the same time, however, a number of parties adopted a "business as usual" approach to this proceeding and argued strenuously in favor of maintaining regulations -- or, even worse, reviving regulations -- which serve their individual interests. Specifically, some commenters (most notably MCI) assert that the Commission should resurrect structural separation.[5] Other commenters advocate granting Section 251 unbundling rights to pure information service providers ("ISP")[6] and retaining the CEI plan filing requirement.[7] Relying on rhetoric rather than facts, the parties arguing in favor of needless regulations are merely seeking

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[2] AT&T at 9-10; Ameritech at 2-5; Bell Atlantic at 7; BellSouth at 10-16; SBC at 3; U S WEST Comments at 9.

[3] 47 U.S.C. § 161.

[4] WorldCom at 7; AT&T at 13; Ameritech at 7; Bell Atlantic at 11-13; BellSouth at 21; SBC at 27; U S WEST Comments at 25-26.

[5] MCI at 6-10; LCI at 3-5; CompuServe at 6; Commercial Internet eXchange Association ("CIX") at 2; ITAA at 9-16; GSA at 3-6; ATSI at 10-11.

[6] Ad Hoc at 9; Metro One Communications, Inc. at 11; CIX at 7-11; Western Regional Networks, Inc., et al. at 2; KWOM Communications at 5-7; ATSI at 22.

[7] GSA at 6-10; AirTouch Paging at 3-4; ITAA at 16-17.

to achieve an unfair competitive advantage in the information services market.[8] Acceptance of those proposals, which are generally predicated on the notion that regulation is preemptively superior to market forces, would violate the letter and spirit of the 1996 Act.

The Commission must continue to look forward toward competition and deregulation, not backward toward increased regulation and the inefficiencies which regulation always causes. Indeed, the statutory framework of the 1996 Act requires deregulation wherever possible. Section 11 establishes a statutory presumption that regulation is not necessary, and a statutory command that unnecessary regulations must be eliminated.[9] The deregulatory presumption is further buttressed by Sections 10 and 706 of the 1996 Act. Section 10 requires that the Commission forbear from applying any regulation or provision of the Communications Act (other than Sections 251 and 271) whenever such regulation or provision is not necessary either to ensure that the rates and practices of a telecommunications carrier are just and reasonable, or to protect consumers.[10] Section 706 directs the Commission to eliminate any regulation which stands in the way of the deployment of advanced telecommunications services to all Americans.[11] The underlying presumption of the 1996 Act is that greater regulatory freedom will produce significant public interest benefits for consumers by fostering continued

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[8] U S WEST uses the terms "information services" and "enhanced services" interchangeably throughout these comments.

[9] 47 U.S.C. § 161.

[10] 47 U.S.C. § 160(a).

innovation and growth in the information services industry.

I. THE OVERWHELMING WEIGHT OF THE EVIDENCE SUBMITTED IN THIS PROCEEDING SUPPORTS THE EXPANSION OF THE COMMISSION'S POLICY ALLOWING INTEGRATED INFORMATION SERVICES OFFERINGS

Many commenters agreed with the Commission's tentative conclusion to continue its policy of allowing integrated information services offerings, rather than resurrecting structural separation.[12] MCI attacks this conclusion by arguing that, pursuant to the Ninth Circuit Court of Appeal's Remand Order, the Commission has the burden of establishing the benefits of structural integration as compared to structural separation.[13] In fact, the opposite is true, legally as well as logically.

First, MCI mischaracterizes the Ninth Circuit decision as mandating a return to structural separation.[14] That is simply not the case. On remand, the Commission is merely required to explain that its modified ONA unbundling requirement provides an adequate basis for granting relief from structural separation. The Commission has complied with the Court's directive and identified a number of significant events that have occurred which alleviate any concern about the sufficiency of ONA unbundling.[15]

Second, it is by now self-evident that even the most enlightened regulation is

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[11] 47 U.S.C. § 157 note.

[12] AT&T at 9-10; Ameritech at 2-5; Bell Atlantic at 7; BellSouth at 10-16; SBC at 3; U S WEST Comments at 9.

[13] MCI at 21.

[14] Id. at 15.

[15] Computer III Further Notice ¶¶ 29-36.

a poor substitute for market forces -- especially in a rapidly changing market and technological environment. MCI's position that regulations must be presumed beneficial unless it can be proven otherwise is simply not reflective of reality. Reality is embodied in the 1996 Act itself, however. Section 11 clearly requires the Commission to eliminate regulations such as the structural separation requirement unless it can be demonstrated that there is a compelling need for the regulation. While several commenters argued that structural separation would more effectively prevent discriminatory conduct on the part of the Bell Operating Companies ("BOC"), they failed to present evidence demonstrating that such an extreme measure is needed to protect ISPs from such discrimination, or, even that such discrimination was likely to occur.[16]

In fact, the paucity of evidence that incumbent local exchange carriers ("ILEC") are likely to discriminate against ISPs is striking. MCI and others have a variety of theories which speculate that discrimination might occur in an integrated environment. But the evidence that such discrimination has taken place is simply not there.[17] MCI's attempt to prove discrimination on the part of U S WEST,[18] and a poor one at that, is based solely on allegations that are more than six years old

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[16] ITAA at 9-16; CompuServe at 6-10; Ad Hoc at 3-5.

[17] U S WEST is reminded of the mathematician who proved, as a matter of theoretical analysis, that Sandy Koufax's curve ball actually went straight. While MCI's theories are not as coherent, they bear about the same relationship to reality as that analysis.

[18] MCI at 53 and Tabs B and F (submitted separately).

which U S WEST previously refuted.[19] MCI also argued that structural separation is needed to prevent cross-subsidization.[20] The Commission previously addressed this issue and determined that the elimination of the sharing mechanism completely eliminated the BOCs' incentive to misallocate costs.[21] Despite MCI's concession that access charges are limited by price caps,[22] MCI attempts to avoid the Commission's clear holding by arguing that BOCs can use access revenues to cross-subsidize. This argument is nonsense -- access revenues clearly have nothing to do with information services or any other issue relevant to the instant proceeding. Thus, neither MCI nor any other commenter has come close to satisfying the burden of showing that a return to structural separation serves some vital interest.

Further, MCI's assertion that integrated information services offerings have not resulted in innovation flies in the face of irrefutable evidence demonstrating the public interest benefits that have resulted from this policy.[23] U S WEST, for example, submitted a study previously conducted by Booz-Allen & Hamilton which found that, since the BOCs have been permitted to offer integrated information services, revenues for the ISP market (including voice messaging, audiotext, online database access and transaction processing, e-mail, EDI, and enhanced facsimile) grew at an annual rate of over 18% between 1991 and 1994, with a value of over

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[19] See Attachment A, U S WEST Reply Comments, CC Docket No. 95-20, filed May 19, 1995 at 21-24.

[20] MCI at 63.

[21] U S WEST Comments at 9-10 and n.27.

[22] MCI at 9.

[23] Id. at 37-38.

$25.4 billion in 1994.[24] Similarly, Ad Hoc's unsupported claim that only limited competition has emerged in the information services market is belied by the factual record of this proceeding.[25] The tremendous growth in the number of ISPs demonstrates the effectiveness of market forces, as well as the fact that the Commission's non-structural safeguards regime has proven more than sufficient to prevent abuse of market power. In addition, the proliferation of competition in the local exchange market, facilitated by the market-opening requirements of the 1996 Act, serves as an effective safeguard against discrimination.[26]

U S WEST and other commenters also submitted compelling evidence that reviving structural separation would have a severe negative impact on the BOCs' provision of new information services and the concomitant availability of new services to the public.[27] MCI and LCI attempt to downplay the burden of implementing structural separation by arguing that a separate affiliate already is required for interLATA information services under Section 272.[28] However, as Bell Atlantic indicated, the structural separation requirement of Section 272 will expire in less than two years, so this requirement should not serve as the basis for extending structural separation to intraLATA services.[29] In addition, as AT&T

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[24] See Attachment A to U S WEST Comments.

[25] Ad Hoc at 3.

[26] See Computer III Further Notice ¶ 116.

[27] Ameritech at 10 and Attachment A at 2-9; Bell Atlantic at 8-9 and Attachment A.

[28] MCI at 25-26; LCI at 4. U S WEST disagrees with the Commission's conclusion that a separate subsidiary is necessary for out-of-region information services.

[29] Bell Atlantic at 9.

noted, the fact that Congress focused on interLATA information services demonstrates that it did not intend to supplant the Commission's existing non-structural safeguard regime for intraLATA information services.[30] The existing statutory structure gives BOCs the discretion to decide whether to offer intraLATA information services -- the vast majority of which will never be offered on an interLATA basis -- through a separate subsidiary. Therefore, it is absurd for MCI to argue that the Commission should not take even into account the costs of setting up and operating a separate affiliate.[31]

Notwithstanding MCI's futile attempt to ignore the substantial costs associated with structural separation, the fact remains that such costs are very real. In 1995, U S WEST conducted an internal study of the one-time costs which would be incurred if it were to create a fully separate subsidiary whose sole purpose was to deliver information services to the public.[32] This study concluded that the one-time costs of establishing such a subsidiary would be between $59 million and $90 million.[33] U S WEST's findings are supported by Bell Atlantic's study showing that the cost of moving its voice messaging operations into a separate subsidiary would be at least $100 million, with capital costs of at least $30 million.[34]

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[30] AT&T at 10-11.

[31] MCI at 26-28.

[32] See Attachment B, Structural Separation of Enhanced Service Offerings, a U S WEST internal study prepared by U S WEST Management Information Services. This study was inadvertently omitted from U S WEST's Comments.

[33] Id. at 4.

[34] Bell Atlantic at 8 and Attachment B ¶ 8.

Ultimately, the impact of structural separation would be experienced by customers in the form of delays in the introduction of information services and increased prices for such services.[35] The cost-benefit equation which the Ninth Circuit focused on clearly must be resolved in favor of maximum integration of telecommunications services and information services.

Finally, ALTS raised the argument that if the Commission grants the pending Section 706 Petitions filed by U S WEST and others seeking relief from certain provisions of Sections 251 and 271, then it cannot use the 1996 Act as a rationale for retaining structural integration. However, U S WEST's petition seeks no relief from ONA requirements at all. ALTS also ignores the critical fact that the Section 706 Petitions are not seeking to deregulate bottleneck facilities, but only advanced telecommunications networks. It was the use of bottleneck facilities that the Commission relied on to support the need for any type of ONA, and its tentative conclusion to rely on non-structural safeguards was based on the perceived continuation of LEC essential facilities.[36] Further, the Commission's removal of barriers that prevent ILECs from deploying additional facilities would result in network improvements beneficial to all ISPs. To the extent an ISP feels that ONA safeguards are demonstrably necessary in a DSL environment, they should submit

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[35] Id. at 8-9; U S WEST Comments at 14 (citing to Attachment C of its Comments, the Tardiff Study).

[36] Computer III Further Notice ¶ 11.

this evidence in the Commission's proceeding involving the pending 706 petitions.[37] U S WEST will address other issues relating to its Section 706 Petition in that proceeding.

II. THE COMMISSION SHOULD NOT EXPAND ITS EXISTING ONA UNBUNDLING REQUIREMENTS

A. Section 251 Unbundling Rights Should Not Be Extended To "Pure" ISPs That Do Not Accept The Corresponding Obligations Of Telecommunications Carriers

The majority of commenters agreed that the right to request interconnection, access to unbundled network elements and resale accorded to requesting telecommunications carriers pursuant to Section 251 should not be extended to "pure" ISPs.[38] Several commenters assert that the Commission lacks the authority, on its own, to expand the specific unbundling obligations established by Congress in the 1996 Act.[39] Such an expansion of congressionally-mandated regulatory obligations would be particularly inappropriate in the context of the Commission's biennial review proceeding.[40]

Nevertheless, a number of ISPs argue that they should be afforded Section 251 unbundling rights without assuming the obligations of telecommunications

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[37] Petition for Relief of U S WEST Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-26, filed Feb. 25, 1998.

[38] See, e.g., MCI at 70-71; ALTS at 9-12; ITAA at 24-25; Bell Atlantic at 16; BellSouth at 27-28; USTA at 3-4; GTE at 13-14.

[39] See, e.g., USTA at 3-4; MCI at 70-71.

[40] USTA at 4-5.

carriers.[41] These commenters are seeking to have the best of both worlds. As U S WEST discussed in its comments, pure ISPs do not share the duty of common carriers to serve the public on a non-discriminatory basis.[42] As a result, pure ISPs are exempt from contributing to the high-cost universal service fund and are treated as end users for some regulatory purposes. Thus, pure ISPs should not be able to obtain access to unbundled elements under Section 251 without satisfying the corresponding obligations of telecommunications carriers.

Moreover, those commenters arguing in favor of Section 251 unbundling rights for pure ISPs have failed to demonstrate that existing options are insufficient to meet their needs. For example, those commenters claiming that the 120-day process is overly burdensome[43] failed to recognize that the Section 251 unbundling process actually is more complicated because it involves state-by-state negotiations or arbitrations. In addition, those commenters criticizing the effectiveness of the NIIF -- the industry forum for dealing with ONA technical issues -- failed to explain why ISPs have not taken advantage of this forum to resolve unbundling issues.[44] Full participation by ISPs in the NIIF would be an effective means of addressing technically feasible requests for unbundling.

While several ISPs complain that it is not practical for them to operate as

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[41] Ad Hoc at 7-11; Western at 2-3; Metro One Communications, Inc. at 11-15; KWOM Communications at 5-7. Of course, requiring unbundling in a manner which precluded cost recovery would be confiscatory and unlawful.

[42] U S WEST Comments at 25.

[43] Helicon at 6; WorldCom at 4-6.

[44] NIIF at 13 n.13.

competitive local exchange carriers ("CLEC"),[45] these ISPs also have the option of partnering with an existing CLEC. U S WEST's own experience with CLECs, which is reflected in the 279 approved interconnection agreements that U S WEST has entered into, proves that the implementation of Section 251 is having a significant effect in the real world.[46] Further, many large ISPs are telecommunications carriers and, therefore, can take advantage of Section 251 unbundling directly. Notable examples include AT&T, MCI, WorldCom, and WinStar.[47]

For that matter, ISPs did not really demonstrate that becoming a CLEC would be unduly burdensome, at least if the Commission and state regulators make good in complying with Section 11's requirement that unnecessary regulation be eliminated. Moreover, the ONA process affords ISPs significant unbundling rights through the 120-day process -- although ISPs must request unbundled services, not facilities. None of the comments have shown that ISPs have been wrongfully denied any unbundled basic service element which they have requested. Thus, no need for additional unbundling has been shown.

The explosive growth of the ISP industry is further evidence that there is no need for the Commission to impose additional unbundling obligations on ILECs in this proceeding.[48] Indeed, it is estimated that there are currently around 4,500

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[45] See, e.g., Western Regional Networks, et al. at 2; CIX at 9-10.

[46] On a nationwide basis, GTE has entered into approximately 450 approved interconnection agreements, with another 1,000 currently being negotiated. GTE at 10.

[47] Ameritech at 6.

[48] Computer III Further Notice ¶ 36.

Internet Service Providers, and this number is expected to grow to 5,000 by the end of the year.[49] In short, there is every indication that the current level of ONA unbundling is fostering competition and preventing discrimination.

B. The Commission's Existing Regulatory Regime Provides Competitors With Sufficient Access To DSL Services

A number of commenters express concern that they may be unable to offer DSL service under the Commission's existing regulatory regime.[50] U S WEST has addressed many of these concerns by making its own DSL services available to third-party ISPs and taking steps to ensure that CLECs can offer DSL services over unbundled loops. The underlying elements of U S WEST's DSL service are available through tariffs on a non-discriminatory basis.

DSL technology can vastly increase the capacity of a copper loop, thereby bringing tremendous benefits to customers and telecommunications providers alike. While U S WEST intends to offer its DSL capabilities in a manner which is pro-competitive and consistent with ONA principles, it is very disturbing that some parties to this proceeding actually wish to have the Commission deprive customers of service through regulatory fiat. Any regulation which interferes with the development and deployment of advanced telecommunications services must be eliminated.[51]

U S WEST does not, in any event, seek to provide DSL services in a manner

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[49] U S WEST Comments at 22.

[50] MCI at 68-69; ITAA at 25-26; CIX at 13-14.

[51] 47 U.S.C. § 157 note.

which disadvantages ISPs. To the contrary, the company is actively (and successfully) marketing DSL services to third-party ISPs. Specifically, U S WEST's MegaCentral Service, which is targeted at the ISP market, allows any ISP to connect to its end-user customers at speeds up to 150 times faster than the speed of the average dial-up modem in today's state-of-the-art computer. An ISP can purchase MegaCentral in any central office where U S WEST offers DSL services, thereby obtaining the ability to sign-up its own DSL customers. The attractiveness of U S WEST's MegaCentral service is illustrated by the fact that in Phoenix, Arizona -- the first city in which U S WEST rolled out its DSL service -- there are already at least 12 ISP customers.[52]

In addition, any CLEC can obtain unbundled loops from U S WEST and provide its own DSL service, so long as the loops are qualified for DSL service. U S WEST has committed to conditioning these loops as necessary to facilitate the provisioning of DSL service. Combined with collocated U S WEST central office space, the CLEC can provide competitive DSL service of its own. In fact, there are a number of CLECs and ISPs -- many of them relatively small -- that have already deployed their own DSL services.[53] This number will certainly continue to increase steadily in the absence of regulatory involvement by the Commission.

For those CLECs that do not wish to collocate equipment in a U S WEST central office, U S WEST will deliver the CLEC's unbundled network elements to a

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[52] See Attachment C (Internet ads advertising the availability of DSL service).

Single Point of Termination ("SPOT") bay located in the central office. The CLEC will have access to the central office for the purposes of combining unbundled network elements into a finished service. A CLEC can use the SPOT bay collocation option to connect its DSL equipment to a conditional loop that has been approved for DSL services.

One commenter, CIX, questions U S WEST's motivation in withdrawing Local Area Data Service ("LADS") from state tariffs in 1997, in light of the subsequent deployment of DSL service.[54] LADS is a point-to-point private line service that was designed to be used for voice (e.g., off-premise extensions, signaling circuits) and some low-speed computer connections. As U S WEST previously explained, there was no hidden agenda behind the company's decision to phase out LADS over five years.[55] Rather, LADS was withdrawn because it met the needs of only a limited number of customers and demand for the service had been decreasing for several years.

The use of LADS as a vehicle through which high-speed data could be transmitted -- the use apparently intended by CIX and a use for which LADS was never intended -- would lead to service problems. LADS was essentially an inferior

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[53] ADSL Forum has identified more than 30 ILECs, CLECs and ISPs that expect to deploy DSL service commercially by the end of the year. See www.aDSL.com/trial_matrix.htm.

[54] CIX at 5.

[55] In the Matter of the Application of U S WEST Communications, Inc. to Revise its Access Services Tariff to Grandparent Data Non-Load Service (Local Area Data Service - LADS), New Mexico State Corporation Commission, Docket No. 97-328-TC, Direct Testimony of Leo R. Baca, dated Aug. 8, 1997.

service provisioned over metallic facilities, and unlike most services, LADS could not be remotely tested. This means that trouble with the circuit is difficult and expensive to diagnose and fix. U S WEST fully expected that customers would experience repair problems and general confusion if they used LADS with high-speed data equipment, which was clearly outside the design parameters of the service.

Most significantly, at least if read on a broad basis (as CIX seems to intend), LADS would be priced well below its cost. For example, an unbundled loop ordered by a CLEC, conditioned with no load coils, could be connected together in the central office to provide a service functionally equivalent to a LADS facility. In New Mexico, the average unbundled loop cost is $21.21 and the rate for each end of a LADS circuit is approximately $16.00. Raising the price of LADS to correspond to the unbundled loops price did not seem a good option. For all of these reasons the service has been withdrawn.

III. THERE IS WIDESPREAD SUPPORT FOR STREAMLINING THE COMMISSION'S EXISTING ONA REQUIREMENTS AND COMPUTER III NON-STRUCTURAL SAFEGUARDS

The Commission put forth a number of deregulatory proposals in the Computer III Further Notice designed to streamline its existing ONA requirements and Computer III non-structural safeguards. In particular, the Commission proposed to eliminate the requirement that BOCs file CEI plans and obtain approval for these plans prior to providing new intraLATA information services, as well as the network disclosure rules that preceded the rules adopted pursuant to

the 1996 Act.[56] There was widespread support among the commenters for these proposals. In addition, U S WEST and others identified a number of other ways that the Commission can improve the current regulatory regime by eliminating unnecessary and redundant requirements.

A number of commenters proposed to eliminate or phase out ONA requirements altogether.[57] These proposals make real sense. At some point, ONA will be an anachronism. With local exchange service open to competition, an ISP can obtain service from an ILEC or a CLEC. Obviously, if an ISP desires below-cost service, that service will not be available from a competitor. However, there is no reason why a CLEC could not construct its own version of ONA using unbundled elements of an ILEC's network.

A. The Commission Should Eliminate The CEI Plan Filing Requirement

A number of parties expressed support for the Commission's proposal to eliminate the requirement that BOCs file CEI plans and obtain Common Carrier Bureau approval for these plans prior to providing new information services.[58] AT&T, for example, asserted that the CEI plan filing requirement can be eliminated, provided that BOCs continue to file tariffs for Basic Service Elements ("BSE"), provide adequate disclosure of network changes, and annually list BSEs that BOCs use to provide their own information services.[59] GSA's concern that CEI

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[56] Computer III Further Notice ¶¶ 61, 117-18.

[57] See, e.g., Bell Atlantic at 14-15; Ameritech at 5-7; BellSouth at 10.

[58] AT&T at 13; WorldCom at 7; Ameritech at 7; Bell Atlantic at 3.

[59] AT&T at 14-15.

plans are needed to ensure compliance with the CEI parameters is unfounded because the underlying requirements will remain in place.[60] As discussed in the following section a streamlined version of the Commission's existing non-structural safeguards will provide sufficient protection from discrimination.

There is substantial evidence in the record demonstrating that the CEI plan filing requirement delays the introduction of new information services to the public, burdens the limited resources of the Commission and the BOCs, and stifles innovation. Ameritech conducted a study examining the number of information services innovations during the interim period from 1993 through 1995 in which CEI plans were not required. This study found that the actual number of service innovations during the interim period was 58% higher than would have been introduced if the CEI plan filing requirement had still been in place. The study ultimately concludes that the elimination of regulation has a direct effect on innovation and the introduction of new services.

A number of parties also presented anecdotal evidence of the delays that have occurred as a result of the CEI plan filing requirement.[61] Ameritech noted that its CEI plan for Electronic Vaulting Service took ten months to get approved even though there was no opposition to the plan. In another instance, Ameritech's CEI plan for Personal Access Services was opposed by MCI over a period of eighteen months while, at the same time, MCI was using the delay to add the same functionality to its competing MCI One service. In a quickly evolving market,

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[60] GSA at 6-7.

regulatory pre-approvals of service offerings are inherently and inevitably anti-competitive.

The Commission also should eliminate existing CEI plans. Otherwise, as BellSouth pointed out, BOCs would be subject to two different sets of regulation for similar services.[62] This dual regulatory structure would merely create unnecessary confusion.

B. The Commission Should Eliminate Redundancies In Its CEI Parameters And Computer III Non-Structural Safeguards

U S WEST urges the Commission to aggressively streamline its existing CEI parameters and Computer III non-structural safeguards to eliminate redundancies. U S WEST believes that the nine CEI parameters are fully satisfied via existing ONA non-structural safeguards, the tariffing of basic ONA services, and internal practices; they do not need to be distinct regulatory requirements. Specifically, the CEI parameters of interface functionality and technical characteristics are fully satisfied via the network disclosure safeguard and the filing of tariffs for basic ONA services. The unbundling of basic services, resale, end-user access, CEI availability, minimization of transport costs, and recipients of CEI parameters are fully satisfied through the tariffing of basic ONA services in the jurisdiction where the service is offered. Finally, the installation, maintenance, and repair parameter is satisfied through internal processes and practices.

U S WEST and other commenters agree with the Commission's tentative

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[61] U S WEST Comments at 26-27; Ameritech at 8-10; Bell Atlantic at 12.

[62] BellSouth at 22 n.48.

conclusion that the network disclosure rules adopted pursuant to Section 251(c)(5) of the 1996 Act should supersede the Commission's previous network information disclosure rules established in the Computer II proceeding.[63] These redundancies in the Commission's existing CEI parameters and Computer III non-structural safeguards can be eliminated without negatively affecting competitors.

C. The Commission Should Eliminate Unnecessary ONA Reporting Requirements

U S WEST, in its Comments, proposed to simplify the ONA reporting requirements by consolidating the quarterly installation and maintenance parity reports into an annual affidavit.[64] The annual affidavit should include a statement attesting that proper non-discrimination procedures have been followed and that no BOC personnel have discriminated in the provision of installation, repair or maintenance services. Further, U S WEST proposed that the semi-annual reports and the Annual Report be consolidated into a new Annual ONA Report.[65] These streamlining proposals would eliminate duplicative filing requirements under the current rules. At the same time, U S WEST's proposals would not reduce the level of useful information available to third parties.

U S WEST also agrees with Bell Atlantic that many, if not all, of the ONA reporting requirements in the Annual Report are unnecessary and can be

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[63] U S WEST Comments at 47-48; AT&T at 16-18; Bell Atlantic at 23.

[64] U S WEST Comments at 51.

[65] Id.